

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**NATHANIEL THOMAS PETTIFORD,
JR.** : **CIVIL ACTION NO.: 3:12-CV-2883**

VERSUS : **JUDGE: ROBERT G. JAMES**

**GRAPHIC PACKAGING
INTERNATIONAL, INC.** : **MAGISTRATE: KAREN L. HAYES**

MOTION FOR SUMMARY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes defendant, Graphic Packaging International, Inc., (“GPI,” herein), who respectfully moves this court as follows:

1.

This is a suit for personal injury arising out of an accident occurring on May 25, 2011 at the GPI plant in West Monroe, Louisiana.

2.

Plaintiff alleges that he was injured while performing gear work, changing idler gears on a GPI paper machine, for his employer Bearings and Drives Service Center (“B&D,” herein).

3.

B&D was performing the work at GPI pursuant to a purchase order contract executed on May 19, 2011. (See attached affidavits of Mike Shields, Chad Johnson, and Whitey L. Price along with the purchase order and general terms and conditions, attached as “Exhibits 1, 2, 3, and 4”).

4.

The general terms and conditions state, “if services are to be performed at Buyer’s facilities in the state of Louisiana, it is agreed that pursuant to the provisions of Louisiana

Revised Statutes 23:1061(A)(3), that it is the intent and agreement of the parties hereto that the relationship of the Buyer (owner) to the direct employees and the statutory employees of the Seller (contractor) be that of a statutory employer.”

5.

La. R.S. 23:1061(A)(3) provides that the parties can recognize the existence of a statutory employment relationship in a written contract.

6.

GPI is the statutory employer of B&D’ employees pursuant to La. R.S. 23:1061(A)(3) because there exists a written contract between GPI and B&D that recognizes GPI as a statutory employer of B&D’s employees and the work Plaintiff was performing at the time of the subject accident is an integral part of or is essential to the ability of GPI to generate its goods and products. B&D was performing the work because there was not enough GPI labor available to perform the job. (See attached affidavit of Ryan Canales, attached as Exhibit “5”).

7.

A statutory employer, like a direct employer is provided with tort immunity pursuant to the exclusive remedy provided for in the Louisiana Workers Compensation Act. See La. R.S. 23:1032. Therefore, the above-captioned matter should be dismissed as a matter of law.

WHEREFORE defendant, Graphic Packaging International, Inc., prays that this motion for summary judgment be filed, and be deemed good and sufficient, and that there be a judgment rendered herein, dismissing all claims of the plaintiff against GPI with prejudice at plaintiff’s costs.

Respectfully submitted,

MAYER, SMITH & ROBERTS, L.L.P.
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CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system and has been sent to all known counsel of record by operation of the court's electronic filing system, e-mail, facsimile, or by placing same in the United States Mail properly addressed and with adequate postage prepaid thereon.

Shreveport, Caddo Parish, Louisiana, this 30th day of January, 2013.

s/J. Kris Jackson
OF COUNSEL